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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.REV.P. 528/2006, CRL.REV.P. 529/2006, CRL.REV.P. 530/2006

April 23, 2007

RADHEY SHARMA & ORS. ..... Petitioners
Through Mr. Randhir Jain, Ms. Ruchika Jain, Advocates

versus

C.B.I. ..... Respondent
Through Mr. R.M. Tiwari, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

MR. JUSTICE S. RAVINDRA BHAT (Open Court)

1. These petitions under Sections 397/401 impugns an order on charge made by the learned Special Judge, CBI on 17.4.2006 charging the petitioners of having committed offences under Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act (Hereafter referred to as "the Act").

2. The petitioners at the relevant time were officials of the Punjab National Bank; the first petitioner was the Chief Manager; the second petitioner was the Small Scale

Industries Officer and the third petitioner was Loan Officer. They were arrayed as accused No. 1,4 and 5 in the proceedings before the trial court.

3. The allegations against the petitioners inter alia were that they facilitated commission of offences by one M/s. V.V. Industries which had applied for financial assistance to purchase some machinery. M/s. V.V. Industries was the proprietorship concern of Mr. Subodh Kumar Gupta. His younger brother stood guarantor and had furnished security of his movable properties. The further allegations were that the application for loan/advance was processed without following the proper procedure and verifying the correctness of various the report. It was alleged that the quality of the machinery sought to be hypotheticated to the bank and also the report was not itself verified. One of the allegations were that two bills/invoices were forged and that the matter was processed in haste without the benefit of a Credit Appraisal Report.

4. Learned counsel for the petitioners urged that on an overall conspectus of the material and the facts, the offence under Section 13(1)(b) of the Act could never be said to have been committed. He urged that there was nothing suggestive of illegal gratification having been demanded or received by any of the petitioners. At best, their conduct could amount to negligence in performance of duty or error in judgment but not suggest a culpable frame of mind or intention at dishonesty so as to enrich someone else or cause loss to the bank. It was contended that the basic ingredients of the provision pre-supposed a mental state of having to benefit oneself.

5. Mr. Randhir Jain, learned counsel for the petitioner also placed reliance on some documents filed in these proceedings, to say that the borrowers settled account with the

bank and paid all the outstanding amounts. Therefore, in the absence of any intention to cheat or cause loss to the bank or to enrich themselves, the offence was not made out. The order, therefore, required to be set aside.

6. Learned counsel for the respondent Mr. R.M. Tiwari, on the other hand, urged that the role assigned to each accused was specific. It was contended that the second accused relied upon a false technical feasibility report without satisfying himself and that the third respondent relied upon a false confidential report supplied by the borrower without verifying as to its genuineness or correctness. The petitioner being the Chief Manager and a Senior Officer was expected to satisfy himself that all the formalities spelt out by the bank for release of the advances were indeed made. He proceeded to release sum of Rs. 4.1 lakhs barely before the proposal had been made and before all the documentations were completed. The total exposure of the bank was to the extent of Rs. 19 lakhs. Learned counsel also urged the fact that the entire outstanding were settled by the borrower did not entitle the petitioners to an order of discharge if otherwise the facts pointed to their involvement in wrongful gain to them or others. He relied upon the judgment of this Court reported as *Rashmi Aggarwal vs. CBI*, 122(2005) DLT 62. He also placed reliance upon the judgment of the Supreme Court in *Inspector of Police, CBI vs. Rajagopal and Anr.*, 2003 SCC (Criminal) 1238.

7. The above factual narrative show that the petitioners were all bank officials; they were instrumental in the sanctioning and disbursement of credit facilities which enabled the borrower/other accused to valuable consideration to an extent of Rs. 19 lakhs. The materials relied upon by the trial court show that the second and third petitioners

passed/recommended the proposal on the basis of a technical feasibility report and the confidential report without satisfying the worth and value of securities and machineries. According to the allegations, the machineries were worthless. It is also a matter of record, (as observed by the trial court), that some documents were genuine and were forgeries. The first petitioner had sanctioned the loan and even approved the disbursal of substantial amount the very same day.

8. On behalf of the petitioners, one of the main arguments was that there is no material to suggest that they benefited in any manner from the transaction. Section 13(1) to the extent it is material for the present petition reads as under:

> *"13.* ***Criminal misconduct by a public servant –(1)*** *A public servant is said to commit the offence of criminal misconduct, --*
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> *(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or*
>
> *(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or*
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> *(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or*
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> *(d) if he --*
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> *(i) by corrupt or illegal means, obtains for himself or for any other*

person any valuable thing or pecuniary advantage; or

(ii)by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii)while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) If he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, or pecuniary resources or property disproportionate to his known sources of income."

9. As is evident, textually, Section 19(1) (d)(ii) refer two objective facts i.e. abusing position of a public servant and obtaining for himself or for any other person any valuable thing or pecuniary advantage, Section 13(1)(d)(iii) on the other does not even refer to a pecuniary advantage to the public servant but enacts that the public servant should have committed some acts which results in any person obtaining a valuable thing or pecuniary advantage without public interest. In other words, even in the absence of any pecuniary or other advantage to the concerned public servant if the materials on record suggest his conduct leading to pecuniary or other valuable advantage to a third person without any element of public interest, the offence is deemed to have been committed.

10. In the light of the clear textual position, the argument that the materials on record not showing any advantage to the petitioner and, therefore, leading to the conclusion that no charges can be framed against them clearly has to fail.

11. That brings me to the question as to whether there were sufficient materials to justify an order on charge made by the trial court as it did. The evidence discussed in the impugned order and the preceding paras points to gross failure in duties by the petitioners

who as a matter of routine in the normal course of their functioning in the bank should have verified genuineness of the documents as well as the feasibility of having to accept the machinery as security. The allegations point to the machineries financed and sought to be kept as security were worthless. Therefore, the bank was prima facie exposed to risk to the extent of such overdraft facility. In that sense, the conduct of the petitioners prima facie amounted to mis-conduct within the meaning of expression under Sections 13(1)(d)(3) of the Act.

12. I am also not persuaded by the submission made on behalf of the petitioners that since the amounts payable to the bank stood settled, no charge was made out. That is a matter between the bank and its borrower. This si also supported by the reasoning in *Rashmi Agarwal* (supra) and in *Rajagopal's* case (supra). It would, therefore, be hazardous to the court to, itself at the stage of framing charges, assume that the entirety of the claim having been settled, the trial should not proceed, and charges ought to be dropped.

13. For the above reasons, I find no merits in the petition. The same is accordingly dismissed. It is made clear that any observations made in the course of this order shall not construed as an expression on the merits of this case. All rights and contentions of the parties, available in the trial, are kept open.

14. The petitions are accordingly dismissed.

S.RAVINDRA BHAT, J

APRIL 23, 2007
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